



DISPOSAL OF ASSETS POLICY
2016/2017 FINANCIAL YEAR

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ABBREVIATIONS

MLM	Midvaal Local Municipality
AMP	Asset Management Plan
AO	Accounting Officer
ASB	Accounting Standards Board
ATR	Asset Transfer Regulations
CFO	Chief Executive Officer
DRC	Depreciated Replacement Cost
GRAP	Generally Recognised Accounting Practise
HOD	Head of Department
MDA	Municipal Demarcation Act
MFMA	Municipal Finance Management Act
MM	Municipal Manager
MSA	Municipal Systems Act
PPE	Property, Plant and Equipment
SCM	Supply Chain Management
VAT	Value Added Tax

1. PURPOSE OF THIS DOCUMENT

The purpose of this document is to provide a framework for the disposal or transfer of the municipality's capital assets.

2. DEFINITIONS

“Asset” means a resource controlled by a municipality as a result of past events and from which future economic benefits or service potential are expected to flow to the municipality;

“Basic Municipal Services” shall mean a municipal service necessary to ensure an acceptable and reasonable quality of life, which service – if not provided – would endanger public health or safety or the environment;

“Capital asset” –

- (a) any immovable asset such as land, property or buildings; or
- (b) any movable asset that can be used continuously or repeatedly for more than one year in the production or supply of goods or services, for rental to others or for administrative purposes, and from which future economic or social benefit can be derived, such as plant, machinery and equipment;

"Chief Financial Officer" means the person appointed as the Chief Financial Officer of the Municipality, or his or her nominee;

Commercial services

Commercial services means a service other than municipal services –

- a) rendered by a private sector party or organ of state to or from a municipality on a commercial basis; and
- b) which is procured by the municipality through its supply chain management policy.

"Council" means the Council of the Midvaal Local Municipality;

“Councillor” shall mean a member of the Council of the Municipality;

“Disposal” in relation to a capital asset, includes -

- a) the demolition, dismantling or destruction of the capital asset; or
- b) any other process applied to a capital asset which results in loss of ownership of the capital asset otherwise than by way of transfer of ownership.

"Exempted capital asset" means a municipal capital asset which is exempted by 14(6) or 90(6) of the Municipal Finance Management Act, 2003 (MFMA) from the other provisions of that section;

“Fair market value” in relation to capital assets, means the value at which a knowledgeable willing buyer would buy and a knowledgeable willing seller would sell the capital asset in an arm’s length transaction;

“Financial Year” shall mean the period starting from 1 July in any year and ending on 30 June of the following year;

"Immovable Property" also includes -

- (a) an undivided share in immovable property, and
- (b) any right in immovable property.

"High value" in relation to a capital asset of a municipality, means that the fair market value of the capital asset exceed any of the following amounts:-

- (a) R50 million;
- (b) one percent of the total value of the capital assets of the municipality, as determined from the latest available audited annual financial statements of the municipality; or
- (c) an amount determined by resolution of the Council of the municipality which is less than a) or b);

“the Municipality” means Midvaal Local Municipality;

"Non-exempted capital asset" means a capital asset which is not exempted by section 14(6) or 90(6) of the Municipal Finance Management Act, 2003 (MFMA) from the other provisions of that section;

"Organ of state" – means

- (a) a national department or national public entity;
- (b) a provincial department or provincial public entity;
- (c) a municipality or municipal entity; or
- (d) any other organ of state within the meaning assigned to 'organ or state' in section 239 of the Constitution;

"Regulation" refers to the Municipal Asset Transfer Regulations, Government Gazette no.31346;

"Service Provider"

- (a) in relation to a municipal service, means a private sector party or organ of state appointed by a municipality in terms of Chapter 8 of the Municipal Systems Act (MSA) to perform a municipal service in accordance with that Act; and
- (b) in relation to a commercial service, means a private sector party or organ of state appointed in terms of the supply chain management policy of a municipality to render a commercial service to or for the municipality as an independent contractor;

"Subsidiary asset" in relation to a capital asset, means an asset that forms an integral part of the capital asset or of the operations or maintenance of the asset;

"Transfer" in relation to a capital or subsidiary asset, means transfer of ownership in the asset as a result of a sale or other transaction.

3. CONSTITUTIONAL AND LEGAL BACKGROUND

Section 14 and 90 of the Municipal Finance Management Act (MFMA) (Act No. 56, 2003) states:

“A municipality may not transfer ownership as a result of a sale or other transaction, or otherwise permanently dispose of any capital asset needed to provide a minimum level of basic municipal services.”

The following key principals were adopted to assist in the identification and management of risks associated with the transfer and disposal of capital assets. These principles must be considered and implemented in the context of any asset transfer:

- **Valuation principle**, i.e. the need to attach a value to the transfer or disposal of a municipal capital asset, in order to ensure that the interests of the municipality and each of its stakeholders are not prejudiced by the transfer or disposal;
- **Continuity of service principle**, i.e. the need to ensure the uninterrupted continuance of a municipal service when a municipal capital asset that is being used in the delivery of that service, is transferred or disposed of, particularly when the asset is used in the provision of a minimum level of basic municipal service;
- **Risk transfer principle**, i.e. the need to transfer the risk relating to a municipal capital asset in conjunction with the transfer of the asset; and
- **Asset preservation principle**, i.e. the need to prevent the indiscriminate or unsustainable transfer or disposal of a municipal capital asset in order not to undermine the ability of the municipality to render or expand municipal services in the longer term.

4. OBJECTIVES

The objectives of the Asset Disposal Policy are to:

- Ensure that only assets that are assessed and deemed not to be critical to provide the minimum level of basic municipal services are disposed of;
- Ensure that assets are not disposed when the disposal of the asset or the terms of the disposal of the asset could disadvantage the municipality or community financially or otherwise;
- Ensure that all disposals are, in terms of section 14 (5) of the MFMA, fair, equitable transparent, competitive and consistent with the Supply Chain Management Policy (SCM) of the municipality; and
- Ensure that assets disposed of are updated in the municipality's Asset Register timeously and accurately.

5. APPROVAL AND EFFECTIVE DATE

The policy will be effective as from 1 July 2016.

6. POLICY AMENDMENT

This policy should be reviewed annually to ensure continued compliance with the relevant legislation and accounting standards. Changes to this document shall only be applicable if approved by Council. Any proposals in this regard shall be motivated by the CFO in consultation with the AO and respective HODs. The recommendations of the CFO shall be considered for adoption by Council.

7. RELATIONSHIP WITH OTHER POLICIES

This policy needs to be read in conjunction with other relevant adopted policies of the municipality, including the following:

- Delegation of Powers;
- Accounting Policy;
- Supply Chain Management Policy;
- Land Use Management Policy;
- Asset Management Policy.

8. REFERENCES

The following references were observed in compiling this document:

- Municipal Finance Management Act, 2003
- Municipal Systems Act, 2000
- Local Government Supply Chain Management Guidelines, National Treasury, 2005
- Guide to the Municipal Asset Transfer Regulations
- Municipal transfer and disposal regulations, Government Gazette no.31346

9. ASSET TYPES

In this policy asset means any tangible or intangible resource capable of being owned. Tangible assets include physical assets, such as land, building, plant and equipment; whereas intangible assets include servitudes and similar assets that can not necessarily be seen.

It is important that a municipality has a fully up-to-date asset register that records the name, type, allocation and value of the assets under its control. The asset register forms a critical source of information required during the decision making process on the validity and reasonability of asset transfers and disposals.

9.1 Capital assets

A capital asset may be movable or immovable, provided that it has a life span of at least one year and can be used to produce or supply goods and services, for rentals to others or for administrative purposes (where a future economic or social benefit can be enjoyed).

9.2 High value capital assets

The municipality will firstly have to determine the combined value of any capital assets it intends to transfer or dispose of in the particular financial year (such must also be reflected in its Medium Term Revenue and Expenditure Framework (MTREF) budget).

If the combined value of such capital assets exceeds five percent of the total value of its assets (as determined from its latest available audited financial statements), a public participation process must be followed for each of the capital assets identified for transfer or disposal, irrespective of each capital asset's individual value.

If the combined value of capital assets identified for transfer or disposal during the financial year does not exceed five percent of the total value of its assets, the municipality will have to assess whether each individual capital asset identified for

transfer or disposal in that particular year is a high value capital asset. For each high value capital asset a public participation process must be followed.

If it appears that any or all of the assets are "high value", Council must be approached to authorise the public participation process.

"High value" threshold relating to an *individual capital* asset is determined as the lower of the following:

- R50 million; or
- 1% of the total value of all capital assets of the municipality; or otherwise
- a value determined by Council, provided that the value is less than (a) or (b).

9.3 Exempted capital assets

An exempted capital asset is an asset exempted by sections 14(6) or 90(6) of the MFMA and regulation 20 from the rest of sections 14 and 90 as well as the SCM Regulations.

Exempted capital assets are assets transferred to another organ of state as a result of any of the following circumstances (regulation 20):

- (a) a review by a municipality of its service delivery mechanisms for the performance of a municipal service in terms of Chapter 8 of the Municipal Systems Act (MSA), and the subsequent appointment of an organ of state to perform this service;
- (b) a reorganisation of powers and functions between a parent municipality and its municipal entity;
- (c) an assignment of any of the powers and functions of a municipality to another organ of state by national legislation or in terms of a power contained in national legislation;
- (d) when municipal housing or land is transferred to a national or provincial organ of state for housing for the poor in terms of a national or provincial housing policy;
- (e) when the transfer is required or permitted in terms of national legislation and that legislation determines the conditions of the transfer; or
- (f) any other circumstance provided that the capital asset to be transferred to the organ of state is determined by resolution of the Council not to be needed to provide a minimum level of basic municipal service and is surplus to the requirements of the municipality and municipal entity.

9.4 Non-exempted capital assets

If the transfer or disposal is not the result of any of the above transactions, the asset to be transferred or disposed of will be considered to be a non-exempted capital asset where sections 14 and 90 of the MFMA and the SCM Regulations will apply. In these situations therefore:

- the municipality may not transfer or dispose of a capital asset deemed to be needed to provide a minimum level of basic municipal service;
- the municipality in making the decision as to whether an asset is required to provide a minimum level of basic municipal service, must make that decision and consider the fair market value, and economic and community value to be received for the asset at a meeting open to the public; and
- any transfer must be fair, equitable, transparent, competitive and consistent with the municipality's supply chain management policy.

The requirement to hold a public meeting to consider the decision to transfer or dispose of a movable capital asset below a value determined by Council, may be delegated to the Accounting Officer (AO) to make a decision in some cases (section 14(4) of the MFMA). All transfers or disposals of this nature will be regulated by sections 14 and 90 of the MFMA and Chapter 2 of the ATR – 'Transfer and Permanent disposal of non-exempted capital assets'.

9.5 Subsidiary assets

A subsidiary asset is an asset that forms an important part of a capital asset, as well as an asset that forms part of the operation or maintenance of that capital asset.

These assets are particularly relevant in the transfer of a service, power or function. In these instances, the ATR allow certain subsidiary assets to be transferred with the transfer of that service, power or function. The following subsidiary assets may be included in the transfer:

- movable and immovable assets used for or in connection with the service, power or function to be transferred (including investment property);
- intangible assets which are an integral part of that service, power or function;
- short and long-term receivables associated with that service, power or function; and
- investments, cash and bank balances or reserves derived from the performance of that service, power or function.

Subsidiary assets are always linked to the capital asset being transferred and therefore a municipality will not need to consider whether they should be regarded as high value or otherwise, they may be either – provided that their transfer comes as a result of the transfer of a service, power or function. If the capital asset to which the subsidiary asset is linked, is of high value, that the public consultation process on that capital asset must include consultation on all the subsidiary assets linked to that capital asset, to ensure transparency of the transaction as a whole.

If the transfer of the capital asset is classified as exempted, the transfer of the subsidiary asset is also exempted, if it is part of the same transaction.

10. TRANSFER OR DISPOSAL OF A CAPITAL ASSET

10.1 Classification of capital assets

Capital assets are classified as either exempted or non-exempted capital assets, in terms of sections 14(6) or 90(6) of the MFMA and regulation 20 of the ATR, refer to 9.3 and 9.4 above.

Exempted capital assets are capital assets transferred to another organ of state as a result of any of the circumstances described in section 9.3 of this policy.

10.2 Non-exempted capital assets

Once the asset identified for transfer or disposal has been classified as a non-exempted capital asset, the municipality must consider whether the asset is a high value capital asset as described in section 9.2 of this policy.

10.2.1 High value capital asset

In the case where a high value capital asset forms part of a transfer or disposal of the appointment of a service provider to perform a municipal or commercial service in terms of regulation 12(2), sections 14(2) or 90(2) of the MFMA and regulation 5(1) prescribes that a public participation process should be undertaken as part of and concurrent with the process envisaged in regulation 12(2).

The public participation process may only be authorised by the Council, although any party may make a request to the Council that such a process be considered. The request must be submitted to the Council together with an information statement stating the following (regulation 5(3)(b)):

- the valuation of the asset;
- the method of valuation used to determine that value;
- the reasons for the proposal; and
- the benefits, proceeds and gain or loss that could be realized or incurred from the transfer or disposal.

Where Council has authorised the AO to conduct a public participations process, the AO of the municipality must at least 60 days before the Council meeting authorising the asset transfer or disposal:

- Make public the proposal and information statement, as described above, to all affected communities and interested parties;
- Invite all affected communities and interested parties to submit their comments and representations; and
- Request the views and recommendations for National Treasury on the matter.

After the public participation process, Council may at this point make the section 14(2) or 90(2) determinations, as stated below, and depending on the outcomes of these determinations, either not to transfer or dispose of the asset or to *approve in-principal* of the transfer or disposal of the asset.

In terms of section 14(2) or 90(2) of the MFMA the municipal Council must:

- (a) reasonably decide (or confirm) that the asset is not needed to provide a minimum level of basic municipal service; and
- (b) consider the fair market and economic and community value to be received in exchange for the asset.

All transfers or disposals should be fair, equitable, transparent, competitive and consistent with the SCM policy of the municipality. This is however not applied in the case where the capital asset forms part of the appointment of a service provider to perform a municipal or commercial service in terms of regulation 12(2), refer to 10.2.5 of this policy).

SCM Regulation 40 states that:

- (a) immovable property may be sold only at market related prices except when the public interest or plight of the poor demands otherwise; and
- (b) movable assets may be sold either by way of written price quotations, a competitive bidding process, auction or at market related prices, whichever is the most advantageous to the municipality, etc.

In the case where the bids are well in excess of the fair market value or any other valuation method used by the municipality, the competitive process relies on the AO

and bid committee to make a decision. Compensation received should be at the most advantageous to the municipality.

10.2.2 Not considered a high value capital asset

In the case where the asset is not considered to be high value, and the total value of asset transactions are not more than the 5% threshold value, as stated in 9.2 above, the municipal Council must follow the same considerations at a meeting open to the public as in the case of a high value capital asset transfer or disposal in terms of section 14(2) or 90(2) of the MFMA, as described in 10.2.1 above.

Such determinations are only necessary when the Council wishes to consider the transfer or disposal of the asset. It may resolve not to go ahead with the transfer or disposal without the need for a meeting open to the public.

If the asset is considered needed to provide a minimum level of basic municipal service, then that asset **cannot** be transferred or disposed of (regulations 5(1)(b), MFMA sections 14(2) and 90(2)).

10.2.3 Mandatory considerations

During the public meeting, before approving *in-principle* to either retain, transfer or dispose of the asset, the Council must first consider the following factors (regulation 5(1)(b) & 7), irrespective of whether a high value capital asset or not is under consideration:

- whether it may need the asset at a later date;
- expected gain or loss on transfer or disposal;
- compensation for the asset and if it will result in a cost or benefit;
- management of any risk;
- impact on its credit rating and ability to raise further borrowings in the future;
- limitations or conditions attached to the asset and the consequences of any potential non-compliance of those;
- cost of the proposed transfer or disposal;
- transfer of any liabilities and reserves associated with the capital asset;
- stakeholder comments and recommendations;

- the impact on its own strategic, legal and economic interests; and
- compliance with legislative regime applicable to the proposed transfer or disposal.

10.2.4 Apply discretionary conditions to the transfer or disposal of a non-exempted capital asset

When the Council provides an *in-principle* decision that a non-exempted capital asset may be transferred or disposed of (irrespective of whether the transaction involves a high value capital asset or not), the Council *may impose* conditions on the transfer or disposal, including conditions to specify (*regulation 11*):

- the way in which the asset is to be sold or disposed of (within the framework set by the SCM regulations);
- a floor price or minimum compensation;
- whether the asset can be transferred or disposed of for less than fair market value (subject to the Council first considering the regulation 13(2) criteria); and
- a framework in which direct negotiations with another person may apply, if relevant.

10.2.5 Transfer or disposal of the asset

The MFMA requires the actual transfer or disposal to be fair equitable, transparent, competitive and consistent with the SCM Regulations. Council only has an oversight role in this process to ensure that Council policy are implemented and no Councillor of any municipality may be a member of a municipal bid committee or any other committee evaluating or approving tenders, quotations, contracts or other bids or attend any such meeting as an observer. (Refer MFMA section 117).

Once Council has approved the transfer or disposal, the municipality may commence proceedings to transfer or dispose of the asset – irrespective of the value of the asset or whether it is to be transferred to a private sector party or an organ of state, can only be done in accordance with its SCM policy.

In terms of regulation 12(2), there are two exceptions to the requirement that the actual transfer or disposal of the non-exempted capital asset be done in terms of a competitive process:

- when a municipality undertakes a review of service delivery mechanisms in terms of Chapter 8 of the MSA and a private sector party is selected; and
- when a municipality appoints a private sector party or organ of state to perform a commercial.

In these cases, provided that a competitive bidding process is used to appoint the service provider, a municipality may transfer the asset as part of the appointment of the service provider and negotiate directly with the selected bidder (regulation 12(3)).

10.2.6 Compensation payable

Compensation payable to a municipality for a capital asset in terms of the ATR must always be in line with the disposal management system, see SCM regulation 40 stated in 10.1.2 above.

If the transfer is the result of the transfer of a commercial service or the sale of immovable property such as land or buildings then compensation must reflect fair market value (regulation 13(1), SCM regulation 40(2)).

If movable assets such as plant or equipment are sold, they must be sold at a price most advantageous to the municipality or entity by way of written quotes, competitive bidding or auction or at market related prices (SCM regulation 40(2)).

Once the municipality received compensation relating to the transfer or disposal, the proceeds must be used to discharge any borrowings against the asset at its redemption date or at another date agreed between the municipality and the lender (*regulation 16*).

Alternatively, the municipality may seek to negotiate with the private sector party or organ of state to which the asset is to be transferred, to take over any borrowings

made against the asset as part of the compensation payable, subject to the agreement of the lender.

This effectively means that any liability for borrowings taken out for an asset is removed once the municipality no longer has ownership of the asset. This precludes a municipality from having to service a debt for an asset it no longer owns.

10.2.7 Finalise the asset transfer or disposal agreement

In accordance with regulation 17, a municipality may only transfer or dispose non-exempted capital assets approved for transfer or disposal, by way of a written agreement between the municipality and either private sector party or organ of state. The agreement must include the following:

- term and conditions of the transfer;
- details of the capital and subsidiary assets and liabilities to be transferred;
- compensation to be paid and the terms and conditions for payment; and
- the effective date in which risk and accountability for the assets are to be transferred.

10.3 Exempted capital assets

10.3.1 Considerations prior to the proposed transfer or disposal

The following considerations should be taken into account:

- (a) Identify and distinguish all assets, staff and borrowings associated with the asset identified for transfer or disposal (regulations 23 and 26(1));
- (b) Consider staff and staff liabilities associated with the assets identified to be transferred (regulation 27); and
- (c) Whether the transfer is to another organ of state and circumstances of the transfer (regulations 20, refer to 9.3 above).

10.3.2 Mandatory conditions

Municipal capital assets needed to provide a minimum level of basic municipal services can only be transferred to an organ of state and in the circumstances

provided for in regulation 20, refer to 9.3 above, subject thereto that the transferee (organ of state) demonstrated its ability to adequately maintain and safeguard the asset.

Under these circumstances, the municipality must impose certain mandatory legislated conditions on the transfer and ensure that the transfer documentation contains these conditions.

Conditions that must be included are (regulation 24):

- that ownership of the asset must immediately revert back to the municipality if the organ of state receiving the asset (the transferee) ceases or is unable to render the service; and
- that the transferee cannot without the written approval of the municipality, transfer, dispose, grant a right of use or encumber that asset in any way.

These conditions must also apply to any replacement, upgrade or improvements to the original asset (regulation 24(1), (3) and (4)).

10.3.3 Based on the circumstances of the transfer, the appropriate conditions will apply

(a) Transfer arising from a review of service delivery mechanisms by a municipality

If the asset is needed to provide a minimum level of basic municipal service, the municipality must ensure it receives the required assurances and imposes the necessary conditions, refer to 10.3.2 above, to ensure that the asset will be adequately maintained and appropriately safeguarded (regulation 24).

In all circumstances the municipality is responsible to ensure that the transfer or disposal will result in the continuance of the service to at least the same or better level than would otherwise have been provided by the municipality had it not transferred or disposed the asset (regulation 22(3)).

The municipality may agree with the organ of state to transfer all capital and subsidiary assets that are essential to the performance of that service which in addition to all movable and immovable assets including intangible assets, receivables, investments and cash equal to the difference between the assets and liabilities of that particular service as well as any reserve funds (regulation 25).

Borrowings or other amounts owing by the municipality associated with the service must also be transferred (regulation 26(2)).

In the case where the transfer gives rise to the transfer of staff associated with that service, the staff transfer must be done in accordance with applicable labour legislation and legislation regulating the transfer of liabilities associated with such staff if applicable – such liabilities may include leave entitlements, medical, post-retirement liabilities and other staff liabilities (regulation 27).

(b) Transfer arising from a re-organization of powers and functions between a municipality and its municipal entity

Asset transfers resulting from a re-organization of powers and functions between a municipality and its municipal entity are treated in a similar manner to those transfers resulting from a municipality's full review of service delivery mechanisms in terms of Chapter 8 of the MSA, described in scenario (a) above.

Transfers resulting from a re-organisation of powers and functions between a municipality and its entity, will generally be regarded as being limited to asset transfers to parties owned by the municipality in a closed system of control.

Regulation 22(3) relating to continuity of service is not relevant in this instance, as this is implicit in the conduct of all powers, functions and services within the municipality.

Regulations 25 and 26(2), relating to the transfer of subsidiary assets and borrowings are not applicable to these transfers – the municipality must manage this

process in its own manner provided that it adheres to the principles in the regulations and other relevant legislation. Regulation 27 concerning staff transfers and liabilities associated with such staff remain relevant.

(c) Transfer arising from the assignment of a municipality's powers or functions to another organ of state

Asset transfers deriving from the assignment of certain municipal powers or functions to another organ of state, as a result of national legislation or in terms of a power contained in national legislation, are treated quite differently from the previous two scenarios.

Such transfers include situations such as the re-alignment of municipal boundaries or adding or taking away certain powers and functions of a municipality. This is normally done through national legislation such as the MSA or Municipal Demarcation Act (MDA) and supported by certain provincial legislation.

Regulation 24 conditions and assurance and regulations 22(3), described in scenario (a) above, are not relevant in this scenario, even if the transfer involves assets required to provide a minimum level of basic municipal services, as the transfer is initiated by the national government through legislation. It is anticipated that these factors were considered by the national department and the protection and service continuity will become the responsibility of the transferee (organ of state that is to receive the service).

Regulations 25, 26(2) and 27, refer to scenario (a) above, relating to subsidiary assets, borrowings and staff are applicable to these transfers may all be considered.

In the case where the asset transfer is a result of national legislation, thus an initiative of national government, a public participation process is not necessary. Therefore the provisions of regulation 22(1) are not relevant.

(d) Transfer of municipal land or housing for the poor in terms of the national or provincial policy

If a national or provincial policy on housing necessitates the transfer of municipal housing or land to a national or provincial organ of state for the poor, the provisions of regulations 22, 24, 25, 27 and 31 do not apply. As the transfer is limited to specific capital assets i.e. municipal housing and land, regulations that are pertinent to the transfer of a municipal service, power or function are no longer relevant, scenarios (a), (b) and (c) above.

The transfer of borrowings associated with the municipal land or housing will still apply to these transfers (regulation 26(1)).

(e) Transfer required or permitted by national legislation

Certain transfers will be the result of national legislation that specifies the conditions of the transfer, unlike transfer described in scenarios (a), (b) and (c) above where the transfer conditions are not stipulated.

In this scenario, the same conditions attached to the transfer of municipal land and housing for the poor, described in scenario (d) above, will be applicable.

(f) Other transfers to organs of state

A capital asset may be transferred to any organ of state in any other circumstances not referred to in the scenarios above, provided that it was determined that the asset is not needed to provide a minimum level of basic municipal service and is surplus to the requirements of the municipality by the municipal Council.

In these situations, only the requirements of regulation 26(1) relating to borrowings associated with the capital asset are relevant. The municipality may directly negotiate the compensation to be paid with the neighbouring municipality.

The municipality must still properly identify and distinguish the assets (and staff if relevant) proposed to be transferred from other assets (and staff) of the municipality as required by regulation 23.

10.3.4 Compensation payable

Council should decide what is in the best interest of the municipality in the particular circumstances, taking into account the value the asset has for the municipality, any liabilities attached to it, etc. It is not necessarily a requirement that compensation is actually paid. Asset and liability values should be determined in accordance with the methods, refer to section 11 Valuation, below.

As the disposal management system of the municipality is not applicable to exempted transfers to organs of state, a municipality may choose to negotiate with the transferee the amount of compensation payable, subject to certain limitations on transfers for less than fair market value contemplated in regulation 20(1)(f), refer to 9.3 above. The amount of compensation payable and the terms and conditions for payment must be set out in the transfer agreement (regulation 30), refer to 10.3.5 below.

If the transfer is the result of any other transfer not contemplated in regulation 20(1)(a) to (e), refer to 9.3 above, for instance when a municipality chooses to sell or donate an exempted capital asset which is not required to provide a minimum level of basic municipal service and is surplus to requirements, to another organ of state for less than fair market value, it may only do so if the municipality takes into account the following matters as per regulation 20(1)(f)(ii):

- whether the capital asset may be required for the municipality at a later date;
- the expected loss or gain that is expected to result from the proposed transfer;
- the extent to which any compensation to be received in respect of the proposed transfer will result in a significant economic or financial cost or benefit for the municipality;

- the risk and rewards associated with the operation or control of the capital asset that is to be transferred in relation to the interest of the municipality;
- the effect that the proposed transfer will have on the ability of the municipality to raise long-term or short-term borrowings in the future;
- any limitations or conditions attached to the capital asset of the transfer of the asset, and the consequences of any potential non-compliance with those conditions;
- the estimated cost of the proposed transfer;
- the transfer of any reserve funds associated with the capital asset;
- the interests of any affected organ of state, the municipality's own strategic, legal and economic interests and the interests of the local community; and
- compliance with the legislative regime applicable to the proposed transfer.

10.3.5 Finalise asset transfer agreement

Before entering into the transfer agreement, the organ of state to whom the asset will be transferred must undertake and document an exercise in due diligence on the assets and liabilities to be transferred. The results of the due diligence must be taken into account in any transfer decision to be made by the organ of state (regulation 32).

All exempted capital asset transfers may only take place by way of a written transfer agreement, signed by both parties and must include the following:

- the terms and conditions of the transfer;
- details of the capital and subsidiary assets and liabilities to be transferred (including valuation details and evidence to support the valuation, encumbrances, servitudes and rights of access requirements);
- compensation to be paid (if any) and the terms and conditions for payment;
- the effective date in which risk and accountability are to be transferred;
- details of any staff affected by the transfer – including details of staff that may be available to the organ of state on a temporary or defined basis, together with the compensation payable for such staff and any financial risk exposure to the municipality;

- if billing, information technology or other administrative systems are to be shared between the parties, the basis of that shared arrangement and any financial risk exposure to the municipality must also be defined and recorded; and
- where an asset is to be used by both the municipality and the organ of state, the basis of how the asset is to be shared as well as how the costs and benefits of the shared asset will be apportioned between the parties.

The transfer agreement must contain a separate clause that states that the transfer was affected on the basis of transfer of exempted capital assets as per the ATR, and that those provisions form part of the agreement (regulation 30(1) and (2)).

In the case of a transfer that emanates from a review of service delivery mechanisms when an organ of state is preferred, the transfer agreement must include provision for contract termination in case of non- or underperformance, dispute resolution and periodic review. It must also provide assurances that the organ of state is able to maintain and safeguard the asset.

The agreement may contain conditions imposed by the municipality that limit or restrict the use or subsequent transfer of the asset, and the extent that the asset may be used to provide security over any borrowings taken out by the organ of state. Such conditions may also be incorporated into the service delivery agreement (regulation 30(3)).

11. VALUATION

11.1 Valuation of assets

When a transfer or disposal of a capital asset is considered, the value of the asset should be determined in accordance with the applicable GRAP standards.

In the absence of guidelines through GRAP, any of the following valuation methods must be used:

- **depreciated replacement cost (DRC):** this is the cost to replace the asset less depreciation to take account of the age and condition of the asset;
- **fair market value:** this is the value that would be agreed between a knowledgeable and willing buyer and a knowledgeable and willing seller;
- **historical cost, adjusted for depreciation and impairment:** this is the original purchase price less adjustments for depreciation and impairment;
- **realisable value:** this is the amount that could be obtained from the transfer less any transfer and completion costs.

11.2 Valuation of liabilities

When a liability specifically associated is to be transferred or disposed asset, the value of the liability must also be determined in accordance with the applicable GRAP standard the municipality applies in preparing its annual financial statements. Such calculations are only necessary where borrowings are transferred or disposed in terms of exempted capital asset transfers or disposals to other organs of state in the circumstances described in 9.3.

In the absence of guidelines through GRAP, any of the following valuation methods must be used:

- **settlement value:** the amount that will be paid or the value of the service that will be provided to settle the liability; or
- **net present value:** the value after discounting a future settlement value to a present value.

12. CALCULATION OF PROFIT AND LOSS ON DISPOSAL**Gain on disposal of asset** (if proceeds are greater than carrying value)

Asset (cost)			Accumulated depreciation		
	Profit / loss	xx	Profit / loss	xx	

Profit / Loss				Bank / Debtors		
Asset (cost)	xx	Acc. Depr.	xx	Profit / loss	xx	
Gain (P/L)	<u>xx</u>	Bank	<u>xx</u>			

Loss on disposal of asset (if proceeds are less than carrying value)

Asset (cost)			Accumulated depreciation		
	Profit / loss	xx	Profit / loss	xx	

Profit / Loss				Bank / Debtors		
Asset (cost)	xx	Acc. Depr.	xx		Profit / loss	xx
Bank	<u>xx</u>	Loss (P/L)	<u>xx</u>			

13. POLICY IMPLEMENTATION

The policy will be effective as from 1 July 2016.

